

CHAPTER 4 ESTABLISHING AND MAINTAINING ADMINISTRATIVE RECORDS

4-1. Scope.

a. This chapter presents the procedures for establishing and maintaining Administrative Records IAW CERCLA for all authorized FUDS HTRW and OE projects at FUDS properties.

b. The Administrative Record, established under section 113 (k) of CERCLA, serves two primary purposes. First, the Record contains those documents which form the basis for selection of a response action and, under section 113 (j), judicial review of any issue concerning the adequacy of any response action is limited to the Record. Second, section 113 (k) requires that the Administrative Record act as a vehicle for public participation in selecting a response action. The procedures discussed in this chapter were developed to ensure that USACE Administrative Records meet these twin purposes.

c. The procedures presented in this chapter apply to all HQUSACE elements and all USACE Commands having responsibility for establishing and maintaining Administrative Records for HTRW and OE response actions at FUDS projects. These procedures do not apply to PRP projects unless USACE is designated the lead agency for execution of this work based on a formal PRP agreement. These procedures are applicable to PRP projects when, based on such an agreement, USACE serves as the lead for execution of the response actions and agrees to maintain the Administrative Record.

4-2. Definition of Administrative Record.

a. The Administrative Record is the body of documents that "forms the basis" for the selection of a particular response at the FUDS project. Documents which are included are relevant documents that were relied upon in selecting the response action, as well as relevant documents that were considered but ultimately rejected (i.e., documents "considered or relied on") (see appendices J, K, and L for particulars relating to Administrative Record documentation requirements).

b. This guidance uses the phrase "considered or relied on" in discussing which documents should be included in the Administrative Record to indicate that it is USACE's general policy to be inclusive for placing documents in the Administrative Record. However, drafts or internal documents are generally not included in the Administrative Record except in specific circumstances (see paragraph 4-10).

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c. The following principles should be applied in establishing Administrative Records:

(1) The Record should be compiled as documents relating to the selection of the response action are generated or received by the Army.

(2) The Record should include documents that form the basis for the decision, whether or not they support the response selection.

(3) The Record should be a contemporaneous explanation of the basis for the selection of a response action.

d. With each type of document, apply the question, "Will this document lead to a response decision?" Many documents that comprise the FUDS project file are support or housekeeping documents that are necessary, but do not contribute to the decision-making process. Documents such as correspondence and work and safety plans may contain information that would be appropriate to include. Some documents contain privileged Government information, such as procurement negotiation memorandum or cost reports that would be inappropriate to release to the public.

e. The effort to establish adequate Administrative Records encompasses a vast array of people, including on-scene coordinators, records managers, PMs, Office of Counsel, public affairs, real estate office, and other Federal agencies. The decision to include those documents labeled U in appendix J will require strong coordination with those offices that will play a role.

f. This procedure includes not only those documents which will comprise the Administrative Record, but will also include a description of a model file structure for an entire FUDS project file (appendix K). The use of this model file structure is optional. If used, however, it affords uniformity and consistency throughout the HTRW and OE programs in the Army.

4-3. Judicial Review.

a. An internal procedure will be developed to channel those documents that are questionable for inclusion in the Administrative Record through the appropriate offices to ensure proper review and coordination. Appropriate offices may include Project Management, Records Management, and Real Estate in conjunction with the Office of Counsel from the district where the PM for the FUDS project resides. Since judicial review of any issues concerning the adequacy of any response action is limited to the Administrative Record, based on section 113 (j) (1) of CERCLA, it is imperative that Office of Counsel have lead responsibility in making final determinations. Counsel will become involved in making decisions for inclusion of documents in the Administrative Record as the documents are being created. The Administrative Records

Coordinator will send all questionable documents (see appendix J - those items marked with a) to the appropriate offices for evaluation and recommendation as to their suitability for inclusion.

b. Section 113 (j)(1) of CERCLA and general principles of administrative law limit the courts to the use of the Administrative Record to support judicial review when the adequacy of a response action is being challenged. As a result, facts or arguments related to the adequacy of a response action that challenging parties present for the first time in court will not be considered since they are not included in the Administrative Record. This statutory limitation does not apply to other litigation which may occur involving active installations or FUDS properties.

c. Administrative Record review saves time by limiting the scope of trials in cases where the adequacy of the response action is being challenged. In these types of cases, the courts may limit a party challenging a decision regarding the use of discovery, hearings, or additional fact finding to look beyond the agency's Administrative Record, except in very limited circumstances. In particular, courts generally will not permit persons challenging a response decision to depose, examine, or cross-examine Federal agency decision makers concerning the selection of the response action. The Administrative Record may have a very important role to play in all litigation. For example, evidence outside the Administrative Record will be both discoverable and admissible in cases which are not exclusively challenging the adequacy of the response action. In these types of cases, the Administrative Record can be critical to help establish the Government's case, even if it is not the exclusive information available for use.

d. The Administrative Record may be cited long after officials responsible for the response decisions have moved into different positions or have left the lead or support agency. Judicial review limited to the Record saves time involved in locating former employees who may not remember the facts and circumstances underlying decisions made at a much earlier time. Therefore, the extent to which the Army benefits from having judicial review limited to the Record depends on the quality and completeness of each Record.

4-4. Public Participation.

a. Section 113 (k) (2) of CERCLA requires that the public have the opportunity to participate in developing the Administrative Record for response selection. Sections 117 and 120(f) of CERCLA also include provisions for public participation, to include State and local officials, in the remedial/removal response action planning and selection process. These sections reflect a statutory emphasis on public participation. Therefore, the Administrative Record file will be developed with the involvement of the public as discussed in paragraphs 4-13, 4-14, and 4-15. Participation by interested persons will ensure that the Government has considered the concerns of the public during the response selection process. In addition, for purposes of administrative and judicial review, the Record will contain documents that reflect the participation of the public and the Army's consideration of the public concerns.

b. If the Army does not provide an opportunity for involvement of interested parties in the development of the Administrative Record, persons challenging a response action may argue that judicial review should not be limited to the Record. The Army must, therefore, make the information considered or relied on in selecting a response action available to the public, provide the appropriate opportunity for public comment on this information, place comments and information received from the public in the Record, and reflect in the Record the Government's consideration of this information. Public availability of the Record is discussed in paragraph 4-13.

4-5. Procedures for Establishing the Administrative Record.

a. IAW CERCLA, the NCP, and various referenced guidance documents, a simple and comprehensive system has been developed for establishing and maintaining the Administrative Record and Record files for all USACE geographic districts performing FUDS HTRW or OE projects and all civil works districts that are taking the lead for FUDS projects within civil works boundaries. This system will also be used when a USACE district enters into an agreement with the lead agency to take responsibility for establishing and maintaining the Administrative Record for environmental restoration activities being executed. This system permits DOD to achieve the judicial review and public participation goals of the Administrative Record by the most efficient and practical means.

b. The Administrative Record file should be distinguished from the Administrative Record. The Record file refers to the documents as they are being compiled and may be thought of as a holding file. Until a response action decision has been selected, there is no complete Administrative Record for that decision. Thus, to avoid creating the impression that an Administrative Record is complete at any time prior to the final decision, the set of documents compiled for the response action is referred to as the Administrative Record file or Record file, rather than the Administrative Record.

c. It is the responsibility of the district where the PM resides to establish and maintain the Administrative Record for each FUDS HTRW or OE project. When performing HTRW work at a FUDS property and OE is found, a separate Administrative Record for the OE is required. When a removal or remedial response action is being executed under the Installation Restoration Program or the Base Realignment and Closure Program, the active installation on which the contaminant is found is responsible for establishing and maintaining the Administrative Record unless a USACE district enters into an agreement to carry out this responsibility as stated in paragraph 4-5a.

d. The PM is responsible for ensuring that each Administrative Record has an index and a table of contents for ease of locating the desired documents. Refer to paragraph 4-7 and appendices M and N, respectively, for specific procedures.

e. In general, every decision document (e.g., ROD for a remedial response action or Action Memorandum for a removal response action) must be supported by an Administrative Record. FUDS property cleanups may be broken up into distinct response actions. At a given FUDS property, this may include several removal and/or remedial response actions for various areas within the FUDS property. For every removal response action or remedial response action, a separate Administrative Record must be compiled.

f. Information relevant to more than one response decision, such as an SI report or a PAE report to include supporting historical evidence, may be placed in the Record file for an initial response action and incorporated by reference in the indexes of subsequent Record files for that FUDS property.

4-6. Compilation.

a. The Administrative Record file should be compiled when the FUDS project is initiated as relevant documents on the response action are generated or received. Only final versions of documents which form the basis for the selection of a response action which are clearly relevant and nonprivileged will become part of the Administrative Record, as specified in paragraph 4-2. These documents will be entered into the index and made available to the public as soon as possible. For example, the RI/FS work plan, summaries of data, the RI/FS released for public comment, the Proposed Plan, any public comments received on the RI/FS and the Proposed Plan, the EE/CA and EE/CA-related documents, as well as USACE's responses should be placed in the Record file and made available to the public as soon as they are generated or received.

b. Only reproduced copies of the original documents will be placed in the Record file. The original documents will be maintained in the FUDS project file. When there are questions regarding whether particular documents should be included in the Administrative Record, such documents can be segregated and reviewed at regular intervals with Office of Counsel and other appropriate offices, as described in paragraph 4-2.

c. Documents relevant to the response selection but generated or received after the decision document for the selection of a response action is signed should be placed in a postdecision document file and may be added to the Administrative Record file in certain circumstances, as explained in paragraph 4-12.

4-7. Index and Table of Contents.

a. Each Administrative Record must be indexed and have a table of contents. The index plays a key role in enabling both the Army and members of the public to help locate and retrieve documents included in the Record. In addition, the index can be used for public information purposes for identifying documents located elsewhere, such as related technical literature used

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for research purposes. A Data Element Definition Index is provided at appendix O. The information listed in this appendix should be keyed in to the data base for indices on every document included in the Administrative Record. The table of contents also serves as an overview of the history of the response action at the FUDS project. A model table of contents is provided at appendix N. This model can be used as a guide in developing individual tables of contents for Administrative Records for specific FUDS projects.

b. The Administrative Record index provides the Army with a degree of control over documents located at or near the FUDS project. The creation of an index will prevent persons from altering the Record simply by physically adding documents to or removing documents from the Record file.

c. Documents related to the selection of the response action being received throughout the FUDS project phases should be placed in the Administrative Record file at regular intervals to facilitate public review and input. Concurrently, the table of contents and index should also be updated.

4-8. Administrative Records Coordinator (ARC).

a. Each USACE district responsible for the Administrative Record for a FUDS HTRW or OE project will appoint an ARC early in the commencement of work at the FUDS project. This early appointment is important to ensure that the appropriate documents are included in the Administrative Record file as they are being created. When appropriate, this work may be performed as a collateral duty in those districts with a very small environmental restoration workload. The ARC generally has the responsibility for ensuring that the Administrative Record files are compiled and maintained according to this guidance and in close coordination with the PM who has overall responsibility for the Administrative Record. The ARC will not be responsible for deciding which documents are included in a Record file. Those decisions should be made in coordination with the on-scene coordinator, PMs, Office of Counsel, and any other related offices. As stated in paragraph 4-3a, the Office of Counsel has the lead responsibility for making final determinations on which documents will be included in the Administrative Record. The ARC duties include:

- (1) Developing procedures for creating Record files.
- (2) Ensuring that the public is notified that the Administrative Record file is available for inspection.
- (3) Ensuring that a copy of the Administrative Record file is available at or near the FUDS project.

- (4) Attending the reading area at the district's office during public viewing of the Administrative Record file to ensure safe keeping of the documents.
 - (5) Coordinating efforts to obtain the necessary documents.
 - (6) Indexing the Administrative Record file and preparing a table of contents.
 - (7) Updating the Administrative Record file and indices on a periodic basis.
 - (8) Ensuring availability of the Administrative Record file for copying.
 - (9) Ensuring that sampling and testing data, quality control and quality assurance documentation, and chain-of-custody forms are available for public inspection when these documents have been included by reference only.
 - (10) Coordinating with Office of Counsel on questions of relevance and privilege or confidentiality of documents submitted for the Record files.
 - (11) Arranging for production and presentation of the Administrative Record to court when necessary for judicial review.
 - (12) Arranging for presentation of the Administrative Record for audit purposes.
 - (13) Maintaining the confidential portion of the Record files, if necessary.
- b. Responsibility for designating the ARC resides with the PM as specified in paragraph 4-5. This responsibility includes the requirement to establish a manpower space and funding of the position unless the requirement will be accomplished through contract support.
 - c. If the way the Administrative Record was compiled and maintained is questioned in litigation, the ARC may be called upon to prepare an affidavit or testify about those procedures. Therefore, the ARC should be familiar with the procedures associated with the Administrative Record, and be qualified to fulfill the responsibilities outlined above. This does not imply that the ARC would be required to testify as to the content of the documents contained in the Administrative Record; rather, only the procedures followed for its compilation and maintenance.

4-9. Maintaining the Record.

- a. The official Administrative Record file will be maintained at the district which has PM responsibility for the response action. A duplicate copy of the file will be located at or near the FUDS project. The public should be provided access to the file at both locations. Procedures for

a Document Reading Room, to be located at the district's office, will be established by each district to ensure the integrity of the file is maintained and orderly public access to the Record files. It may be necessary to contract for space or seek an agreement with a local government, community center, or library to use their facility as a repository for public viewing of the duplicate copy (located at or near the FUDS project) of the Administrative Record file.

b. In establishing public access procedures for the Document Reading Room, the security and integrity of the Record files must be maintained to the extent practicable. The ARC will maintain the reading room and periodically review the Record file to ensure the integrity of the documents. Visitors should be able to view the Record file during reasonable hours (e.g., Monday-Friday, 9:00 a.m. - 4 :00 p.m.). The public reading area should include, where feasible:

- (1) Administrative Record file.
- (2) Access to a copier.
- (3) Sign-in book.

c. Controlled access to the files is accomplished by use of a visitor sign-in book which may help to minimize instances in which documents are lost or damaged. The sign-in book provides documentation of the Government's efforts to provide public access to the Record files. Pertinent information recorded in the book could include:

- (1) Date of visit.
- (2) Name.
- (3) Affiliation.
- (4) Address.
- (5) Phone number.
- (6) FUDS project documents viewed.
- (7) Cost of copied materials (if applicable).

d. Since documents in the Record file should be complete, properly organized, and legible, the integrity of the Record file must be maintained. Storage and reading areas should be supervised by the ARC to maintain proper security. Documents should not leave the document room or be left unattended. The ARC should check the order of the documents after they are viewed by the public to be certain that all documents have been returned intact.

e. The Administrative Record file located at a local repository at or near the FUDS project should be handled with similar care. A cover letter should accompany the Administrative Record file when the Record is initially provided to the local repository. This letter should explain the purpose of the Administrative Record, what it consists of, the public's right to review it, and information on how this Record should be maintained. A model transmittal cover letter is provided at appendix P for this purpose. Appendix Q contains a model document transmittal which can be used to obtain a receipt acknowledged response from the local repository receiving the Administrative Record file. If possible, the Administrative Record file should be treated as a noncirculating reference; it should not leave the local repository except under supervision. The phone number of the ARC should be provided to the Administrative Record file users and to the manager of the local repository so that problems can be identified and resolved. This information can be included in an information fact sheet accompanying the Administrative Record file (see appendix R). In addition, the ARC should plan periodic reviews of the Administrative Record file at the local repository to ensure that it remains complete and intact.

4-10. Contents of the Administrative Record. The documents listed below will be considered for inclusion in the Administrative Record. Some of them, however, may not be included depending on a review by the on-scene coordinator, PM, Office of Counsel, and other associated offices (see appendix K, Selecting Documents for the Administrative Record). The term "document" covers a variety of written material, such as pieces of correspondence, data reports, assessments, plans, newspaper articles, notices, and fact sheets. The two primary purposes for establishing the Administrative Record, as specified in paragraph 4-2, should be observed when selecting documents for inclusion.

a. Correspondence related to response action basis - letters, memoranda, and records of conversations, including responses to significant comments from the public.

b. ASRs - historical archival data on previous HTRW and OE response actions at the FUDS property. All factual historical documentation collected in support of the report will be included.

c. FUDS property photographs and maps - may include variously sized maps, photographs, and drawings.

d. FUDS property descriptions and chronologies.

e. Reference documents - reference and research papers used in the course of research to determine previous HTRW/OE response actions at the FUDS property.

f. Federal, state, and local technical records.

g. INPR.

- h. Sampling and analysis data and plans.
- i. Work plans, site safety and health plans, and progress reports, whether prepared by the Government or contractor.
- j. Applicable or Relevant and Appropriate Requirements (ARARs) - Under section 121, CERCLA, these include any proposals and determinations of which laws, regulations, standards, and requirements are ARARs for a particular response action. Correspondence from regulatory agencies on these matters may also be appropriate to include. Inclusion will be based on a determination made by the Office of Counsel as specified in paragraph 4-2.
- k. Anomaly Review Board Findings.
- l. EE/CA.
- m. EE/CA Approval Memorandum.
- n. EE/CA Action Memorandum (including all public comments and responses to them).
- o. RI Report.
- p. Health and Endangerment Assessments (including human health or ecological risk assessments, lead-based paint or asbestos surveys).
- q. FS Reports.
- r. Proposed plans for remedial/removal response action.
- s. ROD (including all public comments and responses to them).
- t. CRP.
- u. News Clippings and Press Releases.
- v. Public Meeting Minutes/Transcripts, including minutes of RAB meetings.
- w. Fact Sheets/Newsletters.
- x. Congressional transcripts and testimonies.
- y. Published Congressional hearings.

z. Real Property Title Search documents.

aa. Approved Real Estate findings and determinations (include relevant outgrants, Environmental Baseline Studies, Findings of Suitability for Transfer or Lease, reports of Access/Availability, and disposal or transfer documents, including SF-118s).

4-11. Inclusion of Documents by Reference Only.

a. Certain documents which are included in the Administrative Record do not have to be maintained at the local repository because of the nature of the documents and the burden associated with maintaining such documents in multiple locations. These documents, however, must be incorporated in the Administrative Record by reference (i.e., in the index but not physically in the Record file), and the index must indicate where the documents are publicly accessible. Where a document is listed in the index but not located at or near the FUDS project, the Army must, upon request, make the document available to the public by including the document in the Administrative Record. This guidance applies to verified sampling data, chain-of-custody forms, and additional guidance and policy documents. It does not apply to documents marked with a security classification, such as "confidential" or "secret," nor does it apply to documents marked with For Official Use Only (FOUO) or privileged documents.

b. Unless requested, the following types of documents do not have to be located in multiple locations:

(1) Verified sampling data may be left in its original storage location. Data summary sheets, however, must be located in the Record file. The index must list the data summary sheets, reference the underlying verified sampling data, and indicate where the sampling data can be found.

(2) Chain-of-custody forms may be left in the original storage location. The index must reference the chain-of-custody forms and indicate their location.

(3) When a confidential or FOUO document is included in the Record file, it should be maintained IAW the appropriate security regulations. The index should identify only the title and/or any other unclassified portions of the document. In some cases, historical records used in the research to determine FUDS property conditions may have been classified at one time. However, because of the length of time from the original classification, classifiers may decide to change the classification or you may request a declassification when appropriate. Classified documents placed in the Administrative Record will be maintained IAW AR 380-5 and any local supplements thereto.

(4) Some documents in the Administrative Record file may be protected from public disclosure on the basis of an applicable privilege. Applicable privileges may include, but are not

limited to, attorney-client communications; attorney work product; trade secret or confidential business or financial information; the deliberative process information, which includes pre-decisional communications expressing opinions, advice, analysis, and recommendations of staff or contractors to agency decision-making officials; Privacy Act information; procurement source selection or procurement integrity information; or national security classified information.

(5) Guidance and policy documents need not be physically included in the Record file, but those guidance or policy documents considered or relied on in selecting the response action must be listed in the index to the Administrative Record along with their location and availability.

(6) Publicly available technical literature that was not generated for the FUDS project at issue, such as engineering textbooks, articles from technical journals, etc., does not have to be located at or near the FUDS project. The document must be clearly referenced in the index unless it has been referenced in a document which is already included in the index.

4-12. Postdecision Information. In all cases, documents generated or received after signing the decision document should be kept in the FUDS project files. In general, postdecision documents should not be added to the Administrative Record file. Since the Administrative Record contains the information which was considered or relied on in selecting the response action, documents generated or received after the response decision should not be included in the Record file. Such documents may, however, be relevant to later response decisions and become part of a later Administrative Record. Some exceptions, however, apply to the following situations where postdecision documents may be added to the Record:

a. Where a decision document does not address or reserves a portion of the decision to be made at a later date. For example, a decision document that does not resolve the type of treatment technology. In such cases, the PM should continue to add to the Record file documents which form the basis for the unaddressed or reserved portion of the decision.

b. Where there is a significant change in the selected response action. Changes that result in a significant difference to a basic feature of the selected response action with respect to scope, performance, or cost may be addressed in an explanation of significant differences.

c. Where the changes are so significant that they fundamentally alter the very nature or basis of the overall response action. Such changes will require an amended decision document.

d. Where comments containing significant information are submitted by interested persons after the close of the public comment period. The PM must consider such comments only to the extent that their comments contain significant information not contained elsewhere in the Record file which could not have been submitted during the public comment period and which substantially support the need to significantly alter the response action.

e. Where the Army holds public comment periods after the selection of the response action.

4-13. Public Availability.

a. Section 113 (k) of CERCLA and NCP subpart I (40 CFR 300.800 et seq.) require that the Administrative Record be available to the public. In satisfying this provision, the Government must comply with all relevant public participation procedures outlined in sections 113 (k) and 117 of CERCLA.

b. The availability of the Administrative Record will vary depending upon the nature of the response action. Different procedures are outlined below for remedial and removal response actions. In all cases, the PM, in coordination with the geographic district PAO, should publish a notice of availability of the Administrative Record when the Record is first made available for public inspection at the agency office and in the vicinity of the FUDS project at issue. The notice should explain the purpose of the Administrative Record, its location and availability, and how the public may participate in its development.

c. The notice should be published in a major local newspaper of general circulation. The newspaper notices should be distributed to persons on a public affairs mailing list for the FUDS project. Publication of the notice should be the responsibility of the geographic district PAO and should be done in coordination with the on-scene coordinator, if any, and the PM. A copy of the notice of availability and list of recipients should be included in the Record file. Appendix S contains a model Notice of Availability.

d. This public notice may be combined with other notices for the same FUDS project, such as a notice of availability of the local information repository, if they occur at the same time. Additionally, the public can be informed through existing special notices, newsletters, and fact sheets.

4-14. Remedial Response Actions. The Administrative Record for a remedial response action must be available for public inspection when the RI begins. For example, when the RI/FS work plan is approved, the PM, in coordination with other team members, must place documents relevant to the selection of the remedy generated up to that point in the Record file. Documents generally available at that time include the PAE, the SI, the RI work plan, inspection reports, sampling data, and the CRP. The Army must continue to add documents to the Record file periodically after they are generated or received during the RI/FS process.

4-15. Removal Response Actions. Section 113 (k) (2) (A) of CERCLA requires the establishment of procedures for the appropriate participation of interested persons in the

development of the Administrative Record for the selection of a removal response action. "Appropriate" participation depends on the nature of the removal response action, as outlined below.

a. A TCRA is a removal response action for which, based on the FUDS property evaluation, it is determined that a period of less than 6 months exists before the onsite removal response action must be initiated. This category includes emergency removal response actions.

b. The Administrative Record for TCRA's must be available for public inspection no later than 60 days after the initiation of the onsite removal response action. For all TCRA's, a notice of availability of the Administrative Record must be published in a major local newspaper and a copy of the notice included in the Record file. This notice should be published at the same time that the Administrative Record is made available to the public. A period of not less than 30 days for public comment and review is required. The PM, in coordination with the geographic district PAO, must provide formal written responses to all significant comments received during the public comment period and place the comments and the responses to them in the Administrative Record. If a public meeting is held to discuss ongoing removal response actions, an official transcript of the meeting, recording all questions and responses, will be documented and made a part of the Administrative Record.

c. A non-time-critical removal response action is a removal response action for which, based on the FUDS property evaluation, the lead agency determines that a planning period of at least 6 months exists before the onsite removal response action must be initiated. The public comment process must be completed before initiation of the removal response action on the FUDS property, except in the event of a TCRA.

d. For non-time-critical removal response actions, the Administrative Record file must be made available for public inspection when the EE/CA is made available for public comment. A notice of the availability of the Record file must be published in a major local newspaper and a copy of the notice included in the Record file.

e. A public comment period on the EE/CA of not less than 30 days must be held so that interested persons may submit comments on the response selection for the Record file. The Army must respond to all significant comments received during the public comment period and place the comments and the responses to them in the Administrative Record file. If a public meeting is held to present the EE/CA, an official transcript of the meeting, recording all questions and responses, will be documented and made a part of the Administrative Record.

4-16. Relationship to Modern Army Recordkeeping System (MARKS).

a. MARKS classification standards relating to the Environmental Restoration Program have been developed to preserve all records necessary to protect the legal and financial interests

of the Army. This action will facilitate the documentation of USACE efforts for future discussion with regulators, to respond appropriately to legal actions and cost recovery or contribution claims, and to initiate cost recovery or contribution claims against other parties.

b. HQUSACE is moving from the Corps of Engineers Electronic Recordkeeping Information System (CEERIS) to Electronic Document Management System (EDMS). New plans call for obtaining purely commercial off-the-shelf packages for EDMS software capabilities which will integrate document management, electronic recordkeeping, and workflow. The new system will be called Corps of Engineers Electronic Document Management System (CEEDMS). CEEDMS will apply to certain categories of documents produced under the Environmental Restoration Program. DA is also developing a central environmental restoration data base called the Installation Restoration Information System (IRIS). All installations collecting data with Base Realignment and Closure or Environmental Restoration money will be expected to begin using IRIS when the system is implemented. IRIS will serve as a central storage location for all critical geotechnical, spatial, and chemical environmental restoration data. IRIS will be available to all users via the Internet. Until IRIS is implemented, it is strongly recommended that installations that are using USAEC's Installation Restoration Data Management Information System (IRDMIS) for electronic storage of environmental data continue to do so. For those installations not using IRDMIS, every effort should be made to save electronic data generated by the laboratories or the prime contractors. This will ensure that data will be available in an electronic format for future input into IRIS. Any implementation of electronic recordkeeping for document management within USACE must comply with CEEDMS and IRIS standards.

c. All files for FUDS HTRW and OE projects will have MARKS numbers assigned to their documents IAW AR 25-400-2. The Administrative Record is a permanent record. The MARKS number is 200-1e. Documents for the Administrative Record, insofar as this procedure is concerned, will have MARKS numbers but will be arranged IAW the recommended file structure as outlined in appendix K. Documents can be found by MARKS numbers in the index. This EP is in no way intended to supersede, circumvent, or in any other way misuse the established recordkeeping regulations.

4-17. Filing and Binding.

a. Since the Administrative Record cannot be created until coordinated decisions are made concerning the appropriateness of particular documents, all potential Administrative Record documents will be maintained in the Administrative Record file by the PM. The Administrative Record file, as described in paragraph 4-5, is the file containing Administrative Record documents as they are created. These documents will be contained in file folders marked IAW the file structure as outlined in appendix K. As can be seen when comparing the file numbers in appendix K, the Model FUDS Project File Structure, to those in appendix N, the Model Table of Contents, it is clear that the documents that comprise the Administrative Record total about 30 percent of the entire FUDS project file.

b. Because the Administrative Record is a specialized subset of the entire FUDS project file and because it is intended for frequent public use, ease of finding and durable binding are imperative. Generally, documents filed by the MARKS are filed in file folders. To prevent loss and maintain file integrity, documents in the Administrative Record will be filed in binders or other fastening folders which secure all pages, with a table of contents in the front of each volume. A separate index volume will enable the searcher to locate specific documents through a variety of index entry arrangements.

c. The index will be maintained in a 1-inch binder. The binder will be labeled on the side and on the front with the FUDS project number, FUDS project location (area within the FUDS property if applicable), Administrative Record Index, and the date, as well as the name of the responsible USACE district. The index should include the following information for each document:

(1) Document Number - a unique sequential number (place this number on the document as well).

(2) Document Date - date of the document.

(3) Document Title - a thorough identification of the actual document with substantive information. Include sufficient information to ensure that the document cannot be confused with another (e.g., the title "report" would be insufficient).

(4) Author - Name and affiliation.

(5) Recipient - Name and affiliation.

(6) Document location.

(7) Document type.

(8) Number of pages.

(9) MARKS number - Include MARKS number as appropriate on all correspondence and maintain IAW disposition instructions.

d. The table of contents will be maintained in its entirety (covering all volumes of the Administrative Record file) in the index binder. A table of contents will also be maintained for each volume of the Administrative Record file. It will be arranged in an organized file structure of 11 major divisions (see appendix K). Within each major division is a series of minor divisions. The records for each FUDS HTRW or OE project in the Army will be arranged according to this

hierarchy of major and minor divisions (see appendix K - Model FUDS Project File Structure). Numbers within each minor division will be mnemonic (depending on length and content of subdivision), that is, the same document type will bear the same minor division number throughout. For example: major division 2 is Removal Response, minor division 2.1 is Correspondence, minor division 2.2 is Sampling and Analysis Data and Plans, minor division 2.3 is Scopes of Work/Contractual Documents; major division 3 is Remedial Investigation, minor division 3.1 is Correspondence, minor division 3.2 is Sampling and Analysis Data and Plans, minor division 3.3 is Scopes of Work/Contractual Documents.

e. Correspondence, as a document type, will always appear as the "1" minor division. Some divisions will have fewer minor divisions or will have content that does not "fit" the same headings, thus disrupting the mnemonic quality. Where possible, though, the same structure will apply. Appendix J shows the 11 major divisions that make up this file structure.

4-18. Audit Procedures.

a. The documents comprising the Administrative Record file will be subject to audit and therefore should be maintained as outlined in this EP. The purpose of an internal management control review is to identify, report, and make appropriate recommendations regarding the elimination of deficiencies in the establishment and/or maintenance of the Administrative Record. The internal review will protect the interests of the Army in the event that the Administrative Record is subject to review or audit. Further, the audit is necessary to ensure that the Administrative Record is maintained in proper order when subject to judicial review. As stated in paragraph 4-3, since judicial review of issues concerning adequacy of any response action is limited to the Administrative Record, it is imperative that internal reviews be performed to ensure the quality and completeness of each Record. The review may be performed by the ARC when applicable or by an internal management control monitor for the HTRW and OE programs.

b. A system of internal controls will be established at each FUDS project to monitor the Administrative Record process. To aid in the review, the following internal management control checklist should be used. Inadequate procedures or incomplete documentation will be detected by using the checklist, thereby preparing the FUDS project for an audit. This checklist can be used for routine internal examination or by an external auditor.

Internal Management Control Checklist

(1) Is the EP 1110-3-8, Public Participation in the Defense Environmental Restoration Program (DERP) for Formerly Used Defense Sites (FUDS), for FUDS HTRW and OE projects in practice in your organization?

(2) Is an individual appointed ARC in writing?

(3) Are the documents created in the FUDS project file arranged according to the Model FUDS Project File Structure, appendix K of EP 1110-3-8?

(4) Are all required documents included in the Administrative Record, as described in appendix M of EP 1110-3-8?

(5) Does the Administrative Record have a Table of Contents?

(6) Does the Administrative Record have an Index? Does the Index indicate where the documents are publicly accessible?

(7) Is the Administrative Record contained in 3-ring binders or other fastening folder which secures all pages?

(8) Are the binders labeled on the side and on the front with the FUDS project number, FUDS project location, and name of responsible USACE district? Is there a Table of Contents in each binder?

(9) Has an internal procedure been established to coordinate with the Office of Counsel and others to determine which documents will become part of the Administrative Record?

(10) Is there a public Document Reading Room at the district office? Are photocopy facilities available for the public? Is controlled access to the Record files accomplished by use of a visitor sign-in book?

(11) Are public reading areas monitored to ensure property security? To the extent feasible, does the ARC check the order of the documents after they have been viewed by the public to ensure that all documents were returned intact?

(12) Are documents relevant to the response selection which are generated or received after the decision document has been signed placed in a postdecision file?

(13) Has an offsite local repository been established? Is the Administrative Record located at a local repository treated as a non-circulating reference?

(14) Has an individual been designated, in writing, as responsible for establishing and monitoring the Administrative Record at a local repository? Does the individual conduct periodic reviews of the Administrative Record at the local repository to ensure that it remains complete and intact?

(15) When sending the Administrative Record to the local repository, are the Transmittal Cover Letter and the Document Transmittal Acknowledgment used?

- (16) Have Fact Sheets been created for the local repository and the general public?
- (17) Has a Notice of Public Availability been developed to inform the public about the availability and location of the Administrative Record?
- (18) For TCRAs, is the Administrative Record available for public viewing no later than 60 days after the initiation of the onsite removal response action? Has a notice of availability been published in a major local newspaper and a copy of the notice included in the Administrative Record file?
- (19) Are formal written responses to all significant comments included in the Administrative Record?
- (20) For non-time-critical removal response actions, is the Administrative Record available for public review when the EE/CA is made available for public comment before initiation of the removal response action?
- (21) If a public meeting has been held to discuss ongoing removal response actions or the EE/CA, has the official transcript of the meeting been placed in the Administrative Record?
- (22) Is every decision document supported by an Administrative Record?
- (23) Are only reproduced or digitally scanned copies of the original documents placed in the Administrative Record file?
- (24) Are documents which are included in the Administrative Record but not maintained at the local repository near the FUDS project (because of the nature of the documents and the burden associated with maintaining such documents in multiple locations) incorporated into the Administrative Record by reference (i.e., in the index but not physically in the Record file)?
- (25) Are documents with a security classification properly marked and handled IAW AR 380-5?
- (26) Are guidance and policy documents listed in the Index to the Administrative Record along with their location and availability?
- (27) Has publicly available technical literature that was not generated for the FUDS project at issue been clearly referenced in the Index?
- (28) Is postdecision information maintained IAW paragraph 4-12 of EP 1110-3-8?

(29) Are procedures established for the appropriate participation of interested persons in the development of the Administrative Record for the selection of a removal or remedial response action?

(30) Are MARKS numbers assigned to all files for FUDS HTRW and OE projects IAW AR 25-400-2?

c. The internal reviewer's examination is conducted for the principal purpose of certifying to the completeness and integrity of the Administrative Record for the FUDS HTRW or OE project. In so doing, the reviewer should place emphasis on significant management areas and operations to ensure that correct procedures are in place for the establishment and maintenance of the Administrative Record. The reviewer will identify, report, and make appropriate recommendations regarding conditions that cause or contribute to inefficient operations, deficiencies, and errors of omission or commission. Detailed examination of management operations will be limited to that deemed necessary based upon appraisal of the adequacy of procedures and internal controls.

d. The reviewer will review the documents that comprise the Administrative Record to ensure their inclusion. To accomplish this, the reviewer should check the contents of the Administrative Record against the Table of Contents and the Index. Random checks throughout the Index to find specific documents will reveal the adequacy and completeness of the Index and the presence of the indexed documents. Likewise, the reviewer should select documents and check their presence in the Index by the variety of entry points, i.e., key words in the title, author, receiver, etc. To determine if correct procedures are in place, the reviewer can use the Internal Management Control Checklist.

e. The Administrative Record file will be reviewed within 1 year of establishment and each succeeding year thereafter, while in public use. The implementation of sound internal controls for all FUDS projects will ensure the organization and orderliness of Administrative Record files, thereby facilitating the review process. It is the responsibility of the district to maintain its Administrative Record file in a condition for review; to prepare or reconstruct such files is not the responsibility of the reviewers. All sets of the Administrative Record file should be reviewed, those at a repository near the FUDS project and those at a public reading room at the district.

f. Deficiencies will be noted in an exit interview with the lead official for the FUDS project and then documented in a follow-up memorandum. The memorandum will state the specific deficiencies, if any, or the strengths and merits attesting to the adequacy of the Record. If deficiencies exist, the memorandum will allow sufficient time for correction. Further, the memorandum will indicate that corrective measures will be taken and implemented prior to the internal management control review the following year.